

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DARRIN S. BRODBECK,

Petitioner,

v.

CASE NO. 2:10-CV-00466

JUDGE SARGUS

MAGISTRATE JUDGE KING

MICHAEL SHEETS, WARDEN,

Respondent.

OPINION AND ORDER

On October 4, 2011, the Magistrate Judge issued a *Report and Recommendation* recommending that the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be dismissed. *Report and Recommendation*, Doc. No. 16. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. *Objection*, Doc. No. 19. The Court will consider the matter *de novo*. See 28 U.S.C. §636(b); Fed. R. Civ. P. 72(b).

Petitioner objects to the Magistrate Judge's recommendation that certain of Petitioner's claims be dismissed as procedurally defaulted because he failed to file a timely appeal to the Ohio Supreme Court or were never properly presented to any state court. Petitioner argues that this Court should conduct a plain error review of those claims. As discussed by the Magistrate Judge, however, "[a] state court's review of an issue for plain error is considered by the Sixth Circuit as the enforcement of a procedural default." *Adams v. Bradshaw*, 484 F.Supp.2d 753, 771 (N.D. Ohio 2007). The Court therefore agrees that Petitioner has waived this Court's consideration of his claim in habeas corpus review.


Petitioner also objects to the Magistrate Judge's recommendation that his claim of ineffective assistance of appellate counsel based on the failure to raise on appeal a claim of ineffective

assistance of trial counsel in connection with the latter's failure to challenge the State's alleged destruction of blood spatter evidence from the decedent's hands. In this regard, Petitioner raises in his *Objection* all the same arguments that he previously presented. For the reasons detailed in the *Report and Recommendation*, this Court agrees that this claim is without merit.

Petitioner's *Objection*, Doc. No. 19, is **OVERRULED**. The *Report and Recommendation*, Doc. No. 16, is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

The Clerk shall enter **FINAL JUDGMENT**.

12-14-2011
Date


EDMUND A. SARGUS, JR.
United States District Judge